

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. EPCRA-08-2004-0005

In the matter of:)	
)	
Newman Construction, Inc.)	
13331 South 1700 West)	COMPLAINT AND NOTICE OF
Riverton, UT)	OPPORTUNITY FOR HEARING
84065)	
)	
Respondent)	
)	
)	

ADMINISTRATIVE COMPLAINT

JURISDICTION

1. This civil administrative enforcement action ("Complaint") is authorized by Congress in section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"). EPA regulations authorized by the statute are set out in part 370 of title 40 of the Code of Federal Regulations. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 CFR part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated Section 312 of EPCRA, U.S.C. § 11022, and proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, 999 18th St., Suite 300, Denver, Colorado 80202-2466, within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8	(Regional Hearing Clerk)	Mellon Bank
P. O. Box 360859M	Pittsburgh, PA	15251

A copy of the check must be mailed simultaneously to the attorney listed below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Dana J. Stotsky at 1-800-227-9441, extension 6905; or the address below.

Dana Stotsky, ENF-L
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.

GENERAL ALLEGATIONS

1. Section 312 of EPCRA, 42 U.S.C. §11022, requires regulated parties that store chemicals in excess of established threshold amounts file and submit to designated state and local offices annual inventory reports ("Tier II's").
2. Respondent is Newman Construction located at 13331 South 1700 West, Riverton, Utah.
3. Respondent is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
4. Respondent is an owner or operator of a "facility" as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
5. Respondent stores diesel fuel in excess of 10,000 pounds at the 13331 South 1700 West facility in Riverton, UT.
6. Respondent was required to submit an inventory report for diesel fuel to the Local Emergency Planning Committee (LEPC) and the State Emergency Response Commission (SERC) by March 1, 2004.
7. In December 2003, the LEPC provided a reporting package and instructions to the respondent regarding the upcoming March 1 deadline. On April 4, 2004, the LEPC sent a reminder notice to the respondent. In May 2004, the LEPC called the respondent to inform them that an enforcement action would be initiated if inventory report was not submitted.
8. On June 21, 2004, the Salt Lake County LEPC issued a Notice of Violation and Order of Compliance to Newman Construction for failure to provide inventory information to the LEPC by March 1, 2004.
9. On July 16, 2004, Newman Construction provided inventory information to the LEPC.
10. This complaint alleges that Respondent filed the inventory report five months after the deadline established under Section 312 of EPCRA, 42 U.S.C. § 11022.

11. All allegations above are incorporated by this reference as if fully set forth in the following count.

COUNT 1

12. Diesel fuel is a hazardous chemical as defined by 29 C.F.R. § 1910.1200(c).

13. At all times relevant to this Complaint, the facility was required to prepare or have available a material safety data sheet ("MSDS") for each hazardous chemical used and stored at the facility. This requirement is found under the Occupational Safety and Health Act of 1970 and the regulations promulgated under that Act.

14. Respondent, as a facility, is required to file a Tier II inventory report for hazardous chemicals it stored in excess of established thresholds. Such thresholds are located at 40 CFR 370.20(b).

15. Respondent failed to timely file the Tier II inventory report for reporting year 2003 for diesel fuel stored in excess of established threshold.

16. Respondent's failure to file Tier II inventory report by the March 1 deadline for diesel fuel constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

PROPOSED CIVIL PENALTY

Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c), as amended, authorizes EPA to assess a civil penalty of \$27,500 for each violation of section 312. Based upon the violation cited in this Complaint, and, to the extent known, upon the nature, circumstances, extent and gravity of the violation alleged, Respondent's history of prior violations of EPCRA, and degree of culpability, as set forth in the "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-To-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act dated September 30, 1999 (enclosed as Complainant's Exhibit #1), EPA proposes to assess the following civil penalty for the

violation described above:

COUNT	VIOLATION	PROPOSED PENALTY
1	Failure to submit by March 1, 2004 a Tier II for diesel fuel stored in 2003	\$5,845

TOTAL PROPOSED PENALTY

\$5,845

The reasoning behind the proposed penalty in this matter is detailed in the penalty calculation narrative and worksheet, incorporated herein by reference and enclosed as Complainant's Exhibit 2.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: **13 September 2004**

By: **David J. Janik**

Michael T. Risner, Director
David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: **9/13/04**

By: **SIGNED**

Martin Hestmark, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: **Sept. 12, 2004**

By: **SIGNED**

Dana Stotsky, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

IN THE MATTER OF:

Neman Construction, Inc.

EPA Docket No.: EPCRA-08-2004-0005

CERTIFICATE OF SERVICE

I hereby certify that the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING dated was served as follows:

The original and one copy was hand carried to:

Regional Hearing Clerk
U. S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, CO 80202-2405

A copy was sent via CERTIFIED MAIL, RETURN RECEIPT REQUESTED, postage prepaid, to:

William Mark Newman
Registered Agent for
Newman Construction, Inc.
13331 South 1700 West
Riverton, Utah 84065

9/14/04

Date

SIGNED

Ms. Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 14, 2004.